IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 695 of 1990
Date of Decision: 25.09.2006

Sahib Devi and others.

..... Appellants

Versus

Ramesh Kumar and another.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri D.R.Mahajan, Advocate for the appellants.
Shri B.S.Bhalla, Advocate for the respondents.

....

Mahesh Grover,J.

The claimants have filed this appeal against award dated 8.3.1990 passed by Motor Accident Claims Tribunal, Ludhiana (hereinafter described as `the Tribunal') in M.A.C.T. Case No.12 of 1989.

The appellants are the mother, widow and son of the deceased-Dev Raj, who lost his life on 25.2.1989 in a road accident caused due to rash and negligent driving of truck bearing no. PUG-1157 by respondent no.1-Ramesh Kumar. The Tribunal disbelieved their version and held that the death of Dev Raj had not been caused by the offending vehicle. On the

quantum of compensation also, the Tribunal held that pecuniary loss on account of death of Dev Raj has not been proved and consequently, the claimants were held not entitled to any compensation.

No asistance has been rendered to the Court by the learned counsel for the appellants. However, after perusal of the record, it transpires that the F.I.R. was lodged soon after the occurrence which ipso facto is an indicator of the accident having taken place. Statements of RW1-Ramesh Kumar, driver and RW2-Kuldip Kumar, cleaner of the truck in question, show that no grievance was made by them regarding their false implication which was their stand throughout before the Tribunal. There is nothing on the record which could suggest the false implication of the respondents. The Tribunal has gone on conjectures and surmises to disbelieve the accident. In view of this, the finding recorded by the Tribunal on the question of negligence is set aside and it is held that the F.I.R. which was lodged immediately after the accident is an indicator of the truthfulness of the version of the appellants.

Deceased-Dev Raj was about 52 years of age. There is no evidence on record to show either his vocation or his earning. Accordingly, his earning capacity has to be taken to be that of a labourer. The accident had taken place in the year 1989 and a labourer, at that point of time, must have been earning Rs.1000/- per month. Therefore, the deceased is taken to have been earning Rs.1000/- per month. He is survived by his wife, son and mother. In view of this, the monthly dependency is assessed at Rs.667/-, rounded off at Rs.670/-, after deducting 1/3$^{rd}$ of the income of the deceased as his personal expenses. In the circumstances of the case, a multiplier of `10' would be suitable. Accordingly, the compensation amount works out

to Rs.670 x 12 x 10 =Rs.80,400/- . Besides, Rs.10,000/- are awarded as funeral expenses. The appellants are also held entitled to a sum of Rs.5000/- on accont of loss of consortium. Thus, a total amount of Rs.95,400/- along with interest at the rate of 7-1/2% per annum from the date of claim petition till the date of actual realisation is awarded to the appellants in equal shares. The respondents shall jointly as well as severally be liable to pay the compensation amount to the appellants.

On the basis of the above conclusion, the appeal is accepted and an award in the aforesaid terms is passed in favour of the appellants and against the respondents.

September 25,2006 (Mahesh Grover )
"SCM" Judge